

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VIDAL WHITLEY,

Plaintiff,

-against-

NYS DOCCS, et al.,

Defendants.

ORDER TO SHOW CAUSE

17-CV-03652 (PMH)

PHILIP M. HALPERN, United States District Judge:

On October 2, 2020, this Court docketed a Notice of Initial Conference setting an initial pretrial conference in this matter for November 10, 2020. (Doc. 68). On November 9, 2020, because of a scheduling conflict, the Court adjourned the initial pretrial conference to January 5, 2021. (Doc. 69). The Court directed, in the November 9, 2020 Order, that Defense counsel serve a copy of the November 9, 2020 Order, along with a copy of the Notice of Initial Conference, on Plaintiff and file proof of service on the docket. (*Id.*). No proof of service was filed.

On January 4, 2021, in light of the fact that Defense counsel did not serve Plaintiff in compliance with the Court's November 9, 2020 Order, the Court issued an Order adjourning the initial pretrial conference to February 9, 2021 and directing the Clerk of the Court to mail a copy of that Order, the November 9, 2020 Order, and the Notice of Initial Conference to Plaintiff. (Doc. 70). The Clerk of the Court mailed the documents in compliance with the Court's directives that same day; that mailing was, however, returned to the Court for the "following reason(s): Attempted – Not known, Unable to forward." (Jan. 27, 2021 Entry).

Shortly thereafter, on February 5, 2021, this Court issued an Order adjourning the initial pretrial conference *sine die*, reminding Plaintiff of his obligation to provide a current mailing address, and directing him to "provide the Court with his new mailing address" within thirty days

(i.e., March 8, 2021). (Doc. 72). That Order advised that “the Court may dismiss this action without prejudice if Plaintiff fails to provide the Court with an address for service.” (*Id.*). The Court noted further in that Order that the docket in a separate action, *Whitley v. Bowden*, No. 17-CV-03564, provided two different addresses for Plaintiff in Rochester, New York, and directed the Clerk of the Court to mail a copy of the February 5, 2021 Order, the January 4, 2021 Order, the November 9, 2020 Order, and the Notice of Initial Conference to Plaintiff at the address on the docket *as well as* the addresses retrieved from Plaintiff’s other action.¹ (*Id.*).

On March 23, 2021, the mail sent to Plaintiff at “360 St. Paul Street, Apt. 413, Rochester, New York 14605,” was returned to the Court “for the following reason(s): Return To Sender Attempted – Not Known Unable To Forward Return To Sender.” (Mar. 23, 2021 Entry). Likewise, on March 26, 2021, the mail sent to Plaintiff at “574 Joseph Center, Rochester, New York 14605,” was returned to the Court “for the following reason(s): Return to Sender Undeliverable As Addressed Unable To Forward.” (Mar. 26, 2021 Entry).

Plaintiff has not communicated with the Court in this action since filing a letter in October 2019, and he has failed to update the Court as to his change of address. However, the Court will permit Plaintiff one final opportunity to respond.

Under Federal Rule of Civil Procedure 41(b), “a district judge may, *sua sponte*, and without notice to the parties, dismiss a complaint for want of prosecution” *Taub v. Hale*, 355 F.2d 201, 202 (2d Cir. 1966); *see also West v. City of New York*, 130 F.R.D. 522, 524 (S.D.N.Y. 1990) (“[T]he Supreme Court has recognized the inherent power of a district judge to dismiss a case for the plaintiff’s failure to prosecute.”); *Lewis v. Hellerstein*, No. 14-CV-7886, 2015 WL 4620120, at *1-2 (S.D.N.Y. July 29, 2015) (dismissing *pro se* plaintiff’s complaint for want of prosecution

¹ The other action, *Whitley v. Bowden*, No. 17-CV-03564, was dismissed by this Court under Federal Rule of Civil Procedure 41(b) by Order dated February 23, 2021.

after the plaintiff failed to file an amended complaint or submit other filings to the court for four months); *Haynie v. Dep't of Corr.*, No. 15-CV-4000, 2015 WL 9581783, at *1-2 (S.D.N.Y. Dec. 30, 2015) (dismissing *pro se* plaintiff's complaint for want of prosecution after the plaintiff failed to respond for six months).

Accordingly, it is hereby ordered that Plaintiff show cause in writing on or before June 1, 2021, why this action should not be dismissed without prejudice for want of prosecution pursuant to Rule 41(b). Failure to respond to this Order will result in dismissal of this case without prejudice for want of prosecution.

The Clerk of the Court is respectfully directed to mail a copy of this Order, the February 5, 2021 Order (Doc. 72), the January 4, 2021 Order (Doc. 70), the November 9, 2020 Order (Doc. 69), and the Notice of Initial Conference (Doc. 68) to Plaintiff at the following addresses:

Vidal M. Whitley
360 St. Paul Street
Rochester, New York 14605

Vidal Whitley
360 St. Paul Street, Apt. 413
Rochester, New York 14605

Vidal Whitley
574 Joseph Center
Rochester, New York 14605

SO ORDERED:

Dated: White Plains, New York
April 30, 2021



PHILIP M. HALPERN
United States District Judge